



**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES**

**GOVERNOR'S ADVISORY COUNCIL (GAC)
TO THE DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES (DDDS)**

October 20, 2015

The Governor's Advisory Council to the DDDS met on October 20, 2015, at the 1056 Woodbrook Conference Room in Dover.

COUNCIL MEMBERS PRESENT: Terri Hancharick, Chair
Thomas Rust
Susan Pereira
Gail Womble
Timothy F. Brooks, Ed.D.
Jamie Doane
Angie Sipple

COUNCIL MEMBERS ABSENT: N/A

STAFF MEMBERS PRESENT: Jane Gallivan
Marie Nonnenmacher
Terry Macy
Vicky Gordy - minutes

GUESTS PRESENT: Carol Kenton, Parent
Terry Olson, The ARC

CALL TO ORDER: The meeting was called to order at 11:04 a.m.

NEXT MEETING: November 24, 2015 - 11:00 a.m.

AGENDA-ADDITIONS: Team Meeting Memorandum

APPROVAL OF MINUTES: The minutes from 7/21/15 and 9/15/15 were approved.

Family Support Waiver

At the approval of the DHSS Secretary, DDDS continues to seek alternate ways to support a Family Support Waiver that creates efficiencies within the Medicaid Program.

DDDS and DMMA cannot manage a Family Support Waiver without additional staff, as this would triple the size of Wavier participants without staff to process applications, help families, and to support DMMA processes.

During the Delaware State Council for Persons with Disabilities Luncheon, the director of the Division of Medicaid and Medical Assistance (DMMA) indicated two areas that require new funding. DMMA reported that signs point to the loss of approximately 11 million due to the Medicaid match change (Medicaid match changes yearly based on certain criteria within the State). For dual eligible, Medicaid Part B premiums are expected to increase that DMMA funds. The DHSS Secretary gave an overview of the budget to include a loss of 1000 DHSS positions over the course of the administration.

Topics for Retreat

The GAC agreed that participating in a retreat assists the Council with obtaining DDDS information. Topics of discussion during the retreat include, legislative items, review of the GAC Council Charter, DHSS Public Budget Hearing information (11/19/15), details of all DDDS housing options and how supported, supported decision making, and a presentation relating to DDDS MAP and PATH Planning.

DDDS engaged in creating a MAP and PATH for future direction at a recent three day MAP-PATH Planning Conference that reviewed the history of DDDS and worked to determine the future direction of DDDS.

It was agreed for DDDS to arrange the retreat to take place at the Holiday Inn (Dover) on December 15, 2015, from 9:30 a.m. – 3:00 p.m.

Cuts to Complex Wheelchair Accessories

Medicare via CMS announced that they intend to apply Medicare Competitive Bid pricing to complex wheelchair accessories effective January 2016. Medicaid usually follows suit with Medicare. Therefore, this will increase the cost, hurt small businesses that sell these items, and increase difficulty in receiving accessories (other than manual).

A report from CMS revealed that because of Medicare's value based purchasing it saved tax revenue by setting a fixed priced on items instead of businesses determining cost. The subject of report was the procurement process, not justification of medical necessity.

Community First Choice Option (CFCO)

CFCO, established under the Affordable Care Act is a new authority under Medicaid that allows the addition of personal care to state plans with certain caveats and conditions. If followed the state receives an extra 6% in the match rate for those services. The idea is to encourage personal care as an alternative to institutionalization. The law requires a workgroup to include people with disabilities and people representing various groups to develop a plan to submit to CMS.

DMMA has established a workgroup to determine what services will be covered under the plan amendment, reimbursement process, qualifications of providers, and who is eligible (not much flexibility as described in CFCO). Individuals must meet state requirements for nursing home admission in order to qualify. A draft state plan amendment is developed and revisions continue. Once finalized, DMMA will take to public for comment.

All individuals on the DDDS Waiver would meet the criteria to include many that are living at home. This is a state plan benefit; therefore, anyone meeting the criteria is entitled to participate. Currently, it is believed this will be delivered through the MCO's but has not yet been determined. DDDS is

concerned how or if this may be afforded due to the current budget outlook. Reportedly, this program costs is three times what was initially estimated.

Supported Decision Making

Reportedly, legislation is drafted to present in January 2016, surrounding supported decision making. This allows the person to officially appoint/identify someone (or more than one) who is not a paid caregiver or profits by any decisions made to assist the individual with decision making. In many cases, a family member is appointed in this role. This does not affect other types of guardianship but rather a continuum. The supported decision maker may not sign documents on behalf of person. The surrogate health decision maker is specific to health related support. Although the supported decision maker may be asked by person to assist with health choices, there may be other areas that the person requests decision making support (i.e. medication administration/usage, personal finances, doctor visits/consultations, etc.).

Supported Decision Making was initially sought for people that are served by DDDS, that act as own guardian, who are prescribed a psychotropic medication for which the physician writes that person does not understand the side effects of medication although the person does not require a guardian to make life decisions. During DDDS reviews, this presented an issue. DDDS met with the Office of Public Guardian (OPG) who agreed to act in medication decision making cases during the interim period. The court did not accept the petition.

The DDDS will provide the GAC with the number of individuals under DDDS assigned a guardian. The OPG supports DSAMH, DDDS, and LTC with guardianship and is reportedly extremely understaffed. DDDS has been working with OPG to prioritize people with an immediate need for guardianship. In the circumstances of being unsure if person is capable to make own decisions, the first point of reference should be to attempt to identify anyone in their life that can be present and advocate for the person. Investigation revealed that some individuals on the initial guardianship concern list had relatives, friends, etc. that were able to re-engage and become involved with individual's life. This may not necessarily lead to guardianship but brings people into someone's life that may provide support in other areas.

DDDS supports joint project development between OPG, DDDS, DSAMH, and LTC to define the role of guardianship due to affecting all of these Division's populations.

Council member presented a commentary of literature surrounding subject, which read, "indeed without more empirical evidence is to how supported decision making functions and practiced it is too early to rule out the possibility it may actually disempower individuals with disabilities by facilitating undue influence by their supporters". Council agreed that this is a risk with any guardianship appointments. Jonathan Martinis has positive information relating to Supported Decision Making available on the web. There are webinars published periodically by National Resource Center for Supported Decision-Making at <http://www.supporteddecisionmaking.org/>.

Council discussed the secondary issue of the lack of communication to various parties that are involved with individuals who need to understand the nature of guardianship. Ongoing guardianship training for provider agency DSP's is required. Council discussed the question of the suitability of guardians that are difficult to contact and absent from individual's life. In these cases, guardianship requires readdressing. Relinquishing guardianship in court is difficult. In some cases when guardian cannot be found the DDDS director consents for the individual's medical procedures.

The Council discussed the Court Appointed Special Advocate (CASA) program in family court. CASA's are appointed by a Family Court judge to represent the best interests of abused and neglected children in the court system.

The Council Chairperson is attending a seminar regarding Supported Decision Making in Washington, DC on November 18th and 19th and will brief Council of outcome.

Updates on Transition Plan

The provider agency self-assessment surveys are underway and approximately one third are returned.

Comments from the August 2015 public hearings were posted and added to the Transition Plan that is available on the Division of Medicaid and Medical Assistance (DMMA) website. Delaware received a response from CMS asking specific questions regarding the Transition Plan. This letter is available on the DMMA website as well.

DDDS is compiling a Consumer Self Survey based on similar survey questions. Once completed DDDS plans to invite the GAC Medicaid Transition Services Work Groups for a one-day meeting to review the consumer surveys. Participants will receive consumer surveys in advance of meeting for review. DDDS expects scheduling soon.

Department of Labor (DOL) Home Care Rules

This rule prevents self-directed home care workers that provide drop-in services at the individual's home from not receiving overtime wages when working over a 40-hour workweek to include travel time from residences where work is performed. This may impact some individuals who receive support at home by a preferred worker that works over the 40 hours per week. This was previously an exemption from the Fair Labor Standards Act (FLSA).

DMMA spoke to this issue during the Delaware State Council for Persons with Disabilities Luncheon held on October 19, 2015. Reportedly, Delaware is committed to not reduce services and wanted to be sure that staff providing services are receiving appropriate compensation. Delaware home care worker rates are above minimum wage. Difficulties that may become burdensome to MCO's include determining the responsible party of incurring overtime when a home care worker provides supports to different people at different locations and work over the 40-hour threshold.

The DOL has announced a proposed rule that would extend overtime protections to white-collar workers exempt from FLSA. The DOL proposes to update and revise the regulations issued under the FLSA that was last updated in 2004. Proposal includes simplifying the identification of nonexempt employees and automatically updating the salary level to prevent the level from becoming outdated. This has concerns for DDDS as many IDD employees are salaried who may require overtime payments if finalized.

Emergency Preparedness

Mike Erixson is the DDDS Emergency Operations Coordinator and does great job, overall. Within DDDS, people living home with drop in supports are considered the critical population. Individual's that reside in group homes that have agency oversight have emergency preparedness plans. In the past, Mike presented to Families Speaking Up regarding emergency preparedness and is willing to repeat to all interested. Mike has concerns with people understanding responsibilities to include if provider

agencies discuss emergency plan with family members, particularly for individuals that live home and attend a day program.

The Office Quality Improvement reviews provider agency emergency preparedness plan during yearly reviews. During a recent meeting with The Delaware Emergency Management Agency (DEMA), DDDS relayed the biggest concern of multiple agencies being dependent upon the same transportation system (DART) to evacuate during emergencies. DEMA is aware and reported that agencies raise this issue on a regular basis.

Another critical component is that people with specialized needs are known to their community responders (fire dept., police dept.) in order for them to be aware of person's situational needs before emergencies arise so prioritization may occur. Reverse 911 may be an option as well.

DDDS will arrange Mike to present to GAC at the beginning of 2016. The idea to contact South Carolina to discuss how evacuations of group homes occurred during recent flooding was discussed by GAC.

Legislation to Limit Time in Solitary Confinement for Prisoners with Mental Health Issues

A GAC member brought this to Council to support House Bill 36 that includes "No person who has been diagnosed with a serious mental illness may be punished for a disciplinary violation by use of solitary confinement". This House Bill is sponsored by Rep. J. Johnson, Rep. Kowalko, Sen. Townsend, and Reps. Barbieri, Baumbach, Bolden, Keeley, Lynn, Mulrooney, Outten; Sens. Blevins, Peterson.

DDDS has a small number (approx. 3) of individuals served that are incarcerated. The biggest issue is that people who commit offenses with an intellectually disability more than likely are found to be a non-adjudicated offenders (not competent to stand trial); therefore, the individual is not remanded to jail but to DDDS. DDDS must remind judges that services provided to individuals are voluntary and that DDDS cannot force people to participate.

On rare occasions, DDDS struggles with dangerous aggressive individuals that present reoccurring incarceration and psychiatric hospitalization. Locating an acceptable home for these types of people is challenging that usually leads to out of state specialized placement in an effort to provide safety for the individual and community where the person resides.

DDDS Electronic Case Record System Presentation

Tabled to next meeting agenda.

Team Meeting Memorandum

The informational mailing dated October 5, 2015, from Terry Macy, DDDS Community Services Director, surrounding changes to team meetings and family contacts was distributed to Council. The third paragraph was address specifically regarding how meeting attendees are determined.

This was sent due to DDDS identifying situations that people are not making their own decisions either with or without guardians. In keeping with the Community Rule and with the work DDDS has been accomplishing with creating the new Life Plan, DDDS is trying place the seed of responsibility and authority with the person and/or their guardian. The side conversations that have enormous impacts on

people's lives should not be happening outside the sphere of influence. This is attempting to place the emphasis where it belongs, with the person and their guardian.

Other Discussion

The three DDDS newly developed Behavior Policies were distributed to Council for review that may be discussed during next meeting. The Deputy Attorney General made a strong recommendation to move these policies into regulation due to significance; therefore, DDDS is going to work with DHSS to move to regulate. This process includes presenting to public for comment.

The Council discussed the need for a planning process for families that DDDS is working to develop.

Announcements and Informational Items

Tim Brooks was congratulated for being awarded the Mary "Custie" Award during the Delaware State Council for Persons with Disabilities Luncheon held on October 19, 2015.

Bridget Hancharick was the subject of the Sunday News Journal article relating to fashion. The Council enjoyed seeing the article.

Adjournment

The meeting adjourned at 12:58 p.m.